

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO.: 5:06CV144**

SHEILA WHEELER JORDAN,

Plaintiff,

vs.

**GREEN TREE SERVICING LLC; and
MANUFACTURED HOUSING CONTRACT
SENIOR/SUBORDINATE PASS-THROUGH
CERTIFICATES 1997-5, FIRSTAR TRUST
COMPANY, Trustee**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants' Motion to Dismiss and Motion to Compel Arbitration. [Doc. #7]. Plaintiff did not file a response. These motions are now ripe for disposition by the Court.

I. FACTUAL AND PROCEDURAL HISTORY

On September 25, 2006, Plaintiff filed suit against Defendants in the Superior Court of Lincoln County, North Carolina. Plaintiff sought injunctive relief and specific statutory remedies arising from alleged violations of North Carolina state law by Defendants. Plaintiff raised claims of: (1) Violation of N.C. Gen. Stat. § 24-10(a), Usurious Origination Fee; (2) Unfair and Deceptive Trade Practices in Violation of N.C. Gen. Stat. § 75-75.1 *et seq.*, Usurious Origination Fee; and (3) Unfair Debt Collection Practices in Violation of N.C. Gen. Stat. § 75-50 *et seq.*, Late Fees. On October 31, 2006, pursuant to 28 U.S.C. § 1446, Defendant timely removed the action to this Court based on its relation to a Title 11 Bankruptcy proceeding entitled *In re Conseco*,

Inc., No. 02B49672 (Bankr. E.D.Ill. 2003).

On November 27, 2006, Defendants filed a Motion to Dismiss and a Motion to Compel Arbitration. Defendants' motions were filed the same day as Plaintiff's attorney's Motion to Withdraw [Doc. #6] and Defendants' Refusal of Magistrate Jurisdiction [Doc. #10]. Before the case was reassigned to this Court, Magistrate Judge Howell granted Plaintiff's attorney's Motion to Withdraw and advised Plaintiff that she was at that time proceeding *pro se* and that she was therefore responsible for meeting deadlines and otherwise prosecuting her suit. [Doc. # 11]. Magistrate Judge Howell also advised Plaintiff that failure to respond to motions and follow the rules governing the prosecution of her suit would result in summary dismissal of her suit as provided by Rule 41 of the Federal Rules of Procedure. *Id.* Magistrate Judge Howell strongly advised Plaintiff to retain substitute counsel. *Id.* Despite Magistrate Judge Howell's recommendations, Plaintiff did not file a response to Defendants' Motion to Dismiss and Motion to Compel Arbitration, and did not otherwise acknowledge in any way that she intended to prosecute this suit.

On January 11, 2007, the Court ordered Plaintiff to show cause why the suit should not be dismissed for lack of prosecution under Rule 41(b) by January 31, 2007. [Doc. # 12]. The Court instructed Plaintiff that she may show cause by hiring a new attorney and having the attorney make a filing to show cause, or make such filing herself. *Id.* The Court ordered that a copy of its order to show cause be served on Plaintiff via certified mail, return receipt requested, at Plaintiff's listed address. *Id.* The Court also ordered that a copy of this District's *Pro Se* Litigants' Guide be attached to its order for delivery to Plaintiff. *Id.* The Court received notice from the United States Postal Service that the Court's order was served on Plaintiff by certified

mail on January 18, 2007. Plaintiff made no response to the Court's order.

II. DISCUSSION

Rule 41(b) of the Federal Rules of Civil Procedure states: "For failure of the plaintiff to prosecute or comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant."

Plaintiff did not file a written a response to the Court's order directing Plaintiff to show cause why this action should not be dismissed with prejudice, nor did she indicate in any way that she intended to continue to prosecute this suit. Therefore, the Court will grant Defendant's Motion to Dismiss.

III. CONCLUSION

IT IS, THEREFORE, ORDERED that Defendant's Motion to Dismiss is hereby **GRANTED**. All of Plaintiff's claims in this action are hereby **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Defendant's Motion to Compel Arbitration is hereby **DENIED AS MOOT**.

Signed: May 1, 2007



Richard L. Voorhees
United States District Judge

